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NOTE

from:	Presidency
to:	Coreper/Council/Mixed Committee
Subject:	EU Conference on Innovation Border Management, Copenhagen, 2-3 February 2012

The importance of border management has increased significantly in Europe over recent years, as border control is increasingly acknowledged as an effective instrument in combating terrorism, illegal migration and crime. Border management should at the same time ensure simple and efficient access to the Member States for bona fide travellers.

With the Communication "Preparing the next steps in border management in the European Union"¹ (February 2008), the Commission addressed the potential offered by new technologies and introduced new ideas on the development of an integrated border management strategy within the EU. These ideas have since come to be known as 'Smart Borders'.

This approach was endorsed in December 2009 by the European Council in the Stockholm Programme. The importance of the work on Smart Borders was more recently underlined in the conclusions from the June 2011 meetings of the JHA Council and the European Council.

¹ COM(2008) 69 final.

On 25 October 2011 the European Commission presented the Communication "Smart Borders – options and the way ahead"¹, which describes a package consisting of a *Registered Travellers Programme* (RTP) and an *Entry/Exit System* (EES). The Commission has with this Communication continued the debate on this topic prior to the legislative proposals from the Commission, which are now expected in June 2012.

With a view to contribute to a comprehensive European approach to innovation in border management and thereby providing the Commission with input for the upcoming legislative proposals and the subsequent development of a RTP and an EES, the Danish Presidency together with the Netherlands hosted a Conference on Innovation Border Management. The Conference took place in Copenhagen on 2-3 February 2012 with participants from Member States, associated Schengen States, the European Parliament, the Commission, Frontex, the USA, the United Arab Emirates and IATA.

Through a combination of plenary presentations and workshops the participants had the opportunity to share their views on the EES and the RTP as well as other potential innovations at the external borders. The participants were invited to share their experience with national border management innovations and their views on possible advantages and disadvantages with the EES and the RTP.

The discussions took place in an informal setting and participants were encouraged to speak freely and as experts rather than representatives of a state or institution.

From the discussions at the conference the Presidency has summarized certain findings based on statements made by participants regarding the EES and the RTP, including national experiences, possible costs and benefits as well as other ideas, issues and concerns related to the Smart Borders package.

¹ COM(2011) 680 final.

Presidency summary of findings**I. Introduction**

The findings set out below are based on statements made by participants regarding the Entry/Exit System and the Registered Travellers Programme including national experiences, possible advantages and challenges related to the smart borders package.

The discussions took place in an informal setting and the conference aimed to facilitate a free discussion among the participating experts without seeking consensus on the different matters.

Thus, the findings represent statements made by participants varying from just a few to a majority of the participants, and they were not submitted to or endorsed by the Conference as such. It should be noted that opposing views to some of the findings reflected below were also expressed.

As a general remark, however, the Commission was called upon to push forward its impact assessment and legislative proposals, taking into account the substantial relevant input from the conference.

II. The Smart Borders package

A number of participants of the conference:

- Agreed on the importance of considering how new technologies for external border management can support the efforts to fight illegal immigration and cross-border crime, while facilitating border crossing for the majority of third-country nationals, who frequently cross the external borders, e.g. for business purposes, and who constitute a minimal threat with regard to illegal immigration and security;

- Expressed support for the Smart Borders package, and agreeing that an Entry/Exit System (EES) could have added value for authorities, and that a Registered Travellers Programme (RTP) could be beneficial for travellers, while raising some questions as to the added value of introducing the RTP and Automated Border Control (ABC, e-gates) in Member States without significant passenger flows at air borders;
- Encouraged work on the Smart Borders proposals to be taken forward as a whole in a co-ordinated and coherent process in the same working party;
- Underlined the need for progress to be made soon before more Member States initiate their own national systems, and, where such already exist, to secure compatibility and interoperability;
- Expressed a general preference for a central architecture for both the EES and the RTP, which appeared to be the most cost-effective option, and to give the best basis for the necessary synergy and interoperability with other EU systems;
- Highlighted the importance of taking into account when considering innovation in border management all relevant systems, including not just the Visa Information System (VIS) and the Schengen Information System (SIS and the future SIS II), but also the collection of Advance Passenger Information (API)¹ and Passenger Name Records (PNR)², for the purpose of the overall security assessment of each traveller;
- Considered that storing biometric data will require specific common standards for quality, quantity and data retention periods, and that the equipment for collecting biometric data at the borders should enable the consultation of all border-related IT systems in one operation;
- Recalled that the newly established IT Agency should be involved in the process so as to assess technical feasibility and risks and with the subsequent development of the systems, but not in a policy role;

¹ COM(2004) 82.

² Commission proposal COM(2011) 23.

- Welcomed the hosting by The Netherlands of a meeting on the use and implementation of *public key infrastructure* for the authentication of the chip and verification of biometrics on e-documents at expert-level in the spring of 2012, and agreed on the added value of future exchanging of views and best practices on this topic;
- Called on the Commission to consider a strategy for how to react if one or both systems break down, and to prevent potential hacking of data in the two systems.

III. Registered Travellers Programme (RTP)

A number of the participants of the conference:

- Considered the RTP as a possible means for more effective deployment of border management resources from low-risk to high-risk passengers, which could help to enhance security and reduce illegal migration, while providing travellers and business with cost-efficient border passage services;
- Realised the challenge for land and sea borders because of limited experiences world-wide;
- Considered that the RTP should in principle be designed as a centralised data base, but that the use and purpose of the system will define the design;
- Acknowledged the potential benefits of Automated Border Control (e-gates) as a supplementary possibility, while not regarding these a prerequisite for RTP;
- Considered the collection of biometric data in a standardized way to be necessary, while leaving the question of storing application data to be answered;
- Suggested that the Commission provide for clear eligibility and disqualification criteria;
- Suggested that the Commission investigate the token option further, including the costs and benefits, as well as the technical feasibility and the impact on privacy, data protection and service-levels;

- Suggested that the Commission consider how it can be ensured that all falsified passports are detected in the Automated Border Controls.

IV. Entry/Exit System (EES)

A number of the participants of the conference:

- Found that the EES could be a valuable policy tool at both national and EU level, as it may provide for substantial information for the purpose of fighting illegal immigration, trafficking and other cross-border crime, as well as facilitating border traffic and improving border control;
- Considered that the EES can have a preventive effect on potential overstayers and provide a valuable tool for returning irregular immigrants, i.a. by improving the possibilities of identifying third country nationals without identity documents;
- Considered that the EES can provide a tool for detecting, identifying and quantifying overstayers, which can generate valuable information for the purpose of the debate on illegal immigration and support the fight against black market economy, and which can also prove useful for the relation with third countries, e.g. with regard to visa policy;
- Suggested that the EES will be able to provide reliable data, which is otherwise lost as more third countries are granted visa liberalisation;
- Considered that the EES should be installed at all external border crossing points in order to be effective;
- Considered that the system should be designed in a way that secures that data can be collected quickly and in a standardized way in order to avoid long waiting lines at the border;
- Recalled that the definition and purpose of the EES must be clear from the start as these set out the terms for data protection;

- Considered that the EES should be based on biometric data – preferably e-passport and/or fingerprints – from the beginning, as the benefits of the system would otherwise be significantly reduced;
- Acknowledged the benefits of access for law enforcement agencies to data stored in the EES, while suggesting that such access should be more limited than for border and visa authorities, similar to the limited access for law enforcement agencies to data in the VIS;
- Stressed that while abolishing the stamping of passport seems to be a fundamental element of EES in order to secure significant benefits for both travellers and authorities, the need of travellers for clear information and documentation on their legal stay in the Schengen area must also be considered;
- Suggested that the Commission consider what should be the consequences of the concrete knowledge about the number of overstayers, and what should be the legal consequence for the individual for overstaying, e.g. regarding entry bans.

V. Data protection and financing

A number of the participants of the conference:

- Considered that the provisions on the data processing should be governed by the general data protection rules¹, while recalling that the purpose of the collection of data must be decided upon before a data protection balancing test can be considered, and underlined the importance of ensuring individuals' rights to access information;
- Recalled that the development of both systems should be based on thorough impact assessments and should be based on a comprehensive plan in order to avoid unforeseen expenses;

¹ Taking into account the most recent Commission proposal on a European Data Protection Framework for the 21st Century, COM(2012)9 final and the two associated proposals COM(2012)10 and COM(2012)11.

- Reiterated that when considering the financing of the systems, the different situations in different Member States, e.g. in terms of border pressure and the subsequent need for a RTP, should be considered;
 - Took note of the possibility of EU funding for the development of systems and co-financing for maintenance costs as suggested in the Commission proposals ‘Building an open and secure Europe: the home affairs budget for 2014-2020¹’ as part of the multi-annual financial framework;
 - Suggested looking to the private sector, such as carriers and airports, to be involved in the financing of the systems.
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¹ COM(2011)749 final.